

## EXHIBIT 2

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July 11, 2018

**Via E-Mail**

Matthew D. Provance, Esq.  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, Illinois 60606

**Re: *In Re: Dealer Management Systems Antitrust Litigation,*  
MDL No. 2817, Case No. 18-CV-864 (N.D. Ill.)**

Dear Matt:

The MDL Plaintiffs write in response to your June 21, 2018 letter regarding certain documents you allege were inadvertently produced to MDL Plaintiffs in this matter, identified in Schedule A attached to your letter (“Disclosed Protected Information”).

Pursuant to Paragraph 13(c) of the Agreed Confidentiality Order (ECF No. 104), MDL Plaintiffs contest the claim of attorney-client privilege and/or work product protection with respect to the documents identified in Exhibit A, which is attached to this letter.

The reasons the identified documents are not protected include, but are not limited to, the following:

- Many of the documents you are attempting to claw back are business email communications – with no lawyers involved in the discussion at all – or business documents such as PowerPoint presentations that plainly were not prepared in anticipation of litigation. *See, e.g.,* CDK-0881687, CDK-0882301, CDK-0882372.
- Parties may not create a privilege in otherwise non-privileged business documents by incidentally copying them to an attorney. For instance, among the documents CDK is attempting to claw back are documents where the author specifically

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states an attorney has been copied for the express purpose of creating a shield of privilege. *See, e.g.*, CDK-0817841, CDK-0872317, CDK-1082360.

- The attorney-client privilege is limited to situations in which the attorney is acting as a legal advisor. The purpose of the communication must be the obtaining or providing of legal advice, not a business discussion.
- The privilege does not apply to an e-mail to a group of employees that may include an attorney, but where there is no request for legal advice and the input from the attorney is business-related and not primarily legal in nature.

In response to Josh Hafenbrack's July 5, 2018 email, you confirmed on July 9 that pursuant to Paragraph 13(c) of the Confidentiality Order, MDL Plaintiffs have until July 12 to compel disclosure of the Disclosed Protected Information. Josh's email also suggested a meet and confer in an attempt to avoid the need for motion practice.

Because of the short deadlines, we are requesting a meet and confer today, July 11, at 4:30 p.m. EST. Alternatively, we would be available for a meet and confer tomorrow, July 12, at 10 a.m. EST or 11 a.m. EST. Please suggest an alternative time if those are unworkable.

Pursuant to Paragraph 13(d) of the Protective Order, we request that, while we work through the meet and confer process to attempt to avoid the need for motion practice, you toll the deadline for filing a motion with the court for one week, up to and including July 19, 2018. Please let us know if you agree.

MDL Plaintiffs reserve their rights to argue that CDK has waived all privileges and protections with respect to the documents identified in Schedule A, because CDK voluntarily produced those documents to the FTC in the context of an adversarial proceeding.

Very truly yours,

*/s/ Elizabeth McKenna*  
Elizabeth McKenna

*/s/ Joshua Hafenbrack*  
Joshua Hafenbrack

cc: CDK-MDL-Team@mayerbrown.com  
Peggy Wedgworth, John Hughes, Michael Acciavatti  
Derek Ho, Michael Namelka

## Exhibit A

<b><u>Bates</u></b> <b><u>Beg Authenticom</u></b>	<b><u>Bates</u></b> <b><u>End Authenticom</u></b>
CDK-0263050	CDK-0263051
CDK-0263645	CDK-0263646
CDK-0345727	CDK-0345728
CDK-0345736	CDK-0345737
CDK-0345738	CDK-0345740
CDK-0741384	CDK-0741387
CDK-0749489	CDK-0749489
CDK-0749520	CDK-0749520
CDK-0749521	CDK-0749542
CDK-0749543	CDK-0749564
CDK-0749642	CDK-0749643
CDK-0772311	CDK-0772332
CDK-0772333	CDK-0772354
CDK-0772377	CDK-0772378
CDK-0772502	CDK-0772502
CDK-0772503	CDK-0772523
CDK-0772524	CDK-0772544
CDK-0773364	CDK-0773364
CDK-0774104	CDK-0774105
CDK-0778474	CDK-0778474
CDK-0817841	CDK-0817842
CDK-0825388	CDK-0825388
CDK-0825389	CDK-0825390
CDK-0825391	CDK-0825391
CDK-0825392	CDK-0825392
CDK-0825393	CDK-0825393
CDK-0825394	CDK-0825394
CDK-0825395	CDK-0825395
CDK-0895627	CDK-0895629
CDK-0899836	CDK-0899837
CDK-0899845	CDK-0899846
CDK-0899896	CDK-0899898
CDK-0902525	CDK-0902529
CDK-0941168	CDK-0941169
CDK-1032800	CDK-1032801
CDK-1032802	CDK-1032802
CDK-1239941	CDK-1239943
CDK-1291734	CDK-1291736
CDK-1291789	CDK-1291790
CDK-1292103	CDK-1292104

<b><u>Bates</u></b> <b><u>Beg Authenticom</u></b>	<b><u>Bates</u></b> <b><u>End Authenticom</u></b>
CDK-1292105	CDK-1292126
CDK-1292136	CDK-1292136
CDK-1296654	CDK-1296656
CDK-1296657	CDK-1296658
CDK-1767126	CDK-1767127
CDK-1767128	CDK-1767129
CDK-1791163	CDK-1791164
CDK-1791165	CDK-1791166
CDK-1801957	CDK-1801957
CDK-1867175	CDK-1867176
CDK-2046410	CDK-2046412
CDK-2046413	CDK-2046415
CDK-2197322	CDK-2197322
CDK-2226452	CDK-2226452
CDK-2263760	CDK-2263760
CDK-2263761	CDK-2263762
CDK-2263763	CDK-2263765
CDK-2263766	CDK-2263766
CDK-2263767	CDK-2263767
CDK-2263768	CDK-2263768
CDK-2263769	CDK-2263769
CDK-2286595	CDK-2286596
CDK-2304249	CDK-2304249
CDK-2304250	CDK-2304260
CDK-2418904	CDK-2418906
CDK-2423336	CDK-2423338
CDK-2428957	CDK-2428958
CDK-2438374	CDK-2438376